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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, *Appellants*,

*v.*

ANDREW PARKER, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

## BRIEF FOR RENAH F. CAMALIER AND LOUIS W. PRENTISS, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLEES.

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# INDEX

## Subject Index


| | Page |
|---|---|
| Preliminary statement | 1 |
| Supplement to Statement of the Case | 2 |
| Argument | 4 |
| Conclusion | 15 |


### Cases Cited


| | |
|---|---|
| *American Power and Light Company* v. *Securities & Exchange Commission*, 329 U.S. 90 | 13 |
| *American Wood Products Co.* v. *Minneapolis*, 35 F. 2d 657, 661 | 14 |
| *Barnes* v. *District of Columbia*, 91 U.S. 540 | 5 |
| *District of Columbia* v. *John R. Thompson Company, Inc.*, 346 U.S. 100, 109 | 6 |
| *Field* v. *Clark*, 143 U.S. 649 | 10 |
| *J. W. Hampton, Jr. and Co.* v. *United States*, 276 U.S. 394 | 10 |
| *LaForest* v. *Board of Commissioners*, 67 App. D.C. 396, 92 F. 2d 547, cert. den. 302 U.S. 760 | 9 |
| *Leventhal* v. *District of Columbia*, 69 App. D.C. 229, 230, 100 F. 2d 94 | 14 |
| *L'Hote* v. *New Orleans*, 177 U.S. 587, 597 | 14 |
| *Lichter* v. *United States*, 334 U.S. 742, 785 | 13 |
| *Metropolitan Railroad Company* v. *District of Columbia*, 132 U.S. 1, 8 | 6 |
| *O'Donoghue* v. *United States*, 289 U.S. 516, 538 | 4 |
| *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U.S. 126 | 11 |
| *Schechter Poultry Co.* v. *United States*, 295 U.S. 495 | 8 |
| *St. Lo Construction Co.* v. *Koenigsberger*, 84 U.S. App. D.C. 319, 322, 174 F. 2d 25, cert. den. 338 U.S. 821 | 14 |
| *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381 | 11 |
| *United States* v. *Smith*, 5 Wheat. (18 U.S.) 153 | 8 |
| *Western Union Telegraph Co.* v. *Lenroot*, 323 U.S. 490 | 8 |
| *Yakus* v. *United States*, 321 U.S. 414 | 12 |


### Other Authorities Cited


| | |
|---|---|
| City and Regional Planning Papers, Bettman, Harvard University Press, 1946, Chapter 21, page 123 | 7 |
| Webster's New International Dictionary, 2d Ed., page 2370 | 8 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

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v.

ANDREW PARKER, ET AL., *Appellees*.

## APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

## BRIEF FOR RENAH F. CAMALIER AND LOUIS W. PRENTISS, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLEES.

### PRELIMINARY STATEMENT

Appellees Renah F. Camalier and Louis W. Prentiss concur in and therefore hereby adopt as part of their brief by reference the brief filed herein by appellees District of Columbia Redevelopment Land Agency and National Capital Planning Commission.

These appellees deem it not inappropriate, however, for purposes of emphasis, to set forth by way of supplement to

said brief of appellees District of Columbia Redevelopment Land Agency and the National Capital Planning Commission, the following matter which they feel is important and might be of some aid to the Court in resolving the case at bar:

## SUPPLEMENT TO STATEMENT OF THE CASE

In addition to the matter set forth in the statement of the case in the brief for the Redevelopment Land Agency and the National Capital Planning Commission, these appellees add the following:

In the affidavit of the Director of Public Health for the District of Columbia, in referring to the area in question, he stated, *inter alia*, that:

> "The most important considerations from a public health standpoint insofar as the redevelopment of the existing slum area is concerned are the following:
>
> 1. The need for the replacement of dilapidated, substandard, and worn out dwellings.
>
> 2. The need for providing adequate sanitary facilities for all dwellings.
>
> 3. The need for reducing area crowding and building crowding to the extent that all persons and particularly children will have adequate light and air.
>
> 4. The need to remove fundamental deficiencies which create harmful conditions and/or provide the sources from which pestilence and disease originate.
>
> 5. The desirability of a planned community which will provide the necessary space for healthful living in hygienic surroundings.
>
> In the redevelopment of a specific area the failure to take all of the properties would jeopardize the fulfillment of these fundamental purposes. Specifically, the failure to include all structures could nullify the community plan to the extent that the

> greatest benefits to the most people might not be achieved. Few if any buildings in slum areas have the necessary requisites of light, air, and sanitary facilities to make them comparable to new structures. In the years ahead such old buildings if left in redeveloped areas would become obsolete long before the general area and by reason of such obsolescence would become sore spots in the new community thereby providing the foci of new slums and the health dangers to be associated with them." (R. 11, 12)

Dr. Seckinger characterized a slum area as one lacking in those things that go to make up a good community, containing alleys in which people reside, overcrowded, lacking adequate living space, light and air. He said that the buildings are worn-out and dilapidated and do not have proper sanitary facilities, that insects and rodents run rampant, encouraging the spread of disease through the area and adjacent communities (R. 10, 11). Dr. Seckinger proved convincingly, by comparing the census figures for the area including Project Area "B" and the figures for the District of Columbia as a whole, that death rates from tuberculosis, syphillis, and other diseases in Project Area "B" far exceed, and in fact were for the most part in excess of twice as heavy as those for the city in general (R. 44).

In his affidavit, the Executive Director of, and Secretary to, the Board of Directors of the District of Columbia Redevelopment Land Agency, referred to the slum conditions of the area, saying that:

> "The conditions of slum and blight shown so clearly by the survey using the American Public Health Association appraisal technique are emphasized and supported by the attached affidavit by Dr. Daniel Seckinger, Director of Health of the District of Columbia. (Exhibit 6). Dr. Seck-

> inger's affidavit demonstrates the intimate relationship between conditions of slum and blight in the Project Area and health, crime and juvenile delinquency." (R. 20)

The record discloses that at the hearing referred to in the brief for the Redevelopment Land Agency, et al., the testimony of 50 persons, groups and organizations present was predominantly in favor of carrying out the plan for Project Area "B", and that all persons or groups present at the hearing who requested to be heard were given a full opportunity to express their views by the Commissioners of the District of Columbia. It was not until after conducting such public hearing and considering the testimony presented, of course, that the Commissioners approved the plan (R. 21).

## ARGUMENT

These appellees will devote this portion of their brief to a subject which the appellants refer to as "an unconstitutional delegation of legislative power because there is an absence of any ascertainable standards for guidance in carrying out its functions" (Appellants' Brief 14).

These appellees concur in the contention made by the Solicitor General that "No problem of delegation of discretion to make laws or impose penalties is involved" (Brief of Land Agency, p. —). But even if this were not so, this Court has held many times that the Federal Congress, in the exercise of the power conferred upon it by Article I, Section 8, Clause 17 of the Constitution of the United States "To exercise exclusive Legislation in all Cases whatsoever, over such District * * * as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States," may delegate certain legislative functions to the Government of the District of Columbia. Thus, this Court declared in *O'Donoghue* v. *United States*, 289 U.S. 516, 538, that:

> "In the District clause, unlike the Territorial clause, there is no mere linking of the legislative processes to the disposal and regulation of the public domain—the landed estates of the sovereign—within which transitory governments to tide over the periods of pupilage may be constituted, but *an unqualified grant of permanent legislative power over a selected area set apart for the enduring purposes of the general government, to which the administration of purely local affairs is obviously subordinate and incidental.* The District is not an 'ephemeral' subdivision of the 'outlying dominion of the United States,' but the capital—the very heart—of the Union itself, to be maintained as the 'permanent' abiding place of all its supreme departments, and within which the immense powers of the general government were destined to be exercised for the great and expanding population of forty-eight states, and for a future immeasurable beyond the prophetic vision of those who designed and created it." (Italics supplied.)

**The extent of the power of Congress to delegate authority to the municipal government of the District of Columbia was indicated by this Court in *Barnes* v. *District of Columbia*, 91 U.S. 540. In that case, in holding the District of Columbia liable for acts and omissions of the Board of Public Works created by the same Act which created the Legislative Assembly, this Court said (p. 544):**

> "A municipal corporation, in the exercise of all its duties, including those most strictly local or internal, is but a department of the State. The Legislature may give it all the powers such a being is capable of receiving, making it a miniature State within its locality. Again; it may strip it of every power, leaving it a corporation in name only; and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality. We do not regard its acts as some-

> times those of an agency of the State, and at others those of a municipality; but that, its character and nature remaining at all times the same, it is great or small according as the Legislature shall extend or contract the sphere of its action."

In *Metropolitan Railroad Company* v. *District of Columbia*, 132 U.S. 1, 8, this Court again stated the rule that the extent and scope of local legislative power which may be delegated to a municipal government are within the wisdom of the superior Legislature:

> "* * * All municipal governments are but agencies of the superior power of the State or government by which they are constituted, and are invested with only such subordinate powers of local legislation and control as the superior Legislature sees fit to confer upon them. The form of those agencies and the mode of appointing officials to execute them are matters of legislative discretion. * * *"

Indeed, very recently in *District of Columbia* v. *John R. Thompson Company, Inc.*, 346 U.S. 100, 109, this Court stated, *inter alia*, that "It would seem then that on the analogy of the delegation of powers of self-government and home rule both to municipalities and to territories there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power, subject of course to constitutional limitations to which all law making is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted".

It is clear then that the Congress had full power to delegate such powers it did to the appellees.

But, as these appellees understand the contention of the appellants concerning the delegation of power, they say that the delegation here involved is invalid because "The Redevelopment Act does not contain standards sufficiently

definite to sustain the validity of an authorization for seizing Appellant's property" (Appellants' Brief p. 13). With the foregoing as their major premise, the appellants apparently conclude that the Act is unconstitutional because it contains "no standards" since the terms "slum", "blight" and "other factors" are not defined (Appellants' Brief p. 14).

In this connection the late, eminent planning expert, Alfred Bettman, in referring to the District of Columbia Redevelopment Bill, which later became the Act here involved, said, *inter alia*, that:

> "There are certain premises and assumptions so settled by experience, by legislative determinations, and by judicial decisions that there is no necessity for their lengthy presentation in this memorandum, which is designed to dwell chiefly upon any novel aspects which this particular proposed piece of legislation presents. For instance: blighted districts produce social evils such as disease, vice; they represent and contain very serious economic losses not merely to those who own property in them but also to the whole community as a community, such as excessive operating costs relative to current revenues, capital losses, evidenced by falling tax bases, capital losses due to stagnation in development, contagious spread of the blight; these social and economic losses are universally known and admitted. Owing to the multiplicity of land ownerships and the obsolescense of existing lot layout, the necessity for assembling the lands into project areas, before anything approaching a planned redevelopment can take place, is obvious. The necessity for the exercise of the power of eminent domain to bring about this land assembly must be equally obvious."[1]

It is apparent from the foregoing quotation that to Bettman "blighted districts" embraced those which "produce

[1] City and Regional Planning Papers, Bettman, Harvard University Press, 1946, Chapter 21, page 123.

social evils such as disease, vice" and those that "represent and contain very serious economic losses not merely to those who own property in them but also to the whole community as a community". Such connotation to the word "blighted", these appellees submit, is the meaning generally attributed to it.

Another word which the appellants apparently contend should have been, but was not defined, is the word "slum". That word has a well-known meaning. For example, the word "slum" is defined in Webster's New International Dictionary, 2d Ed., page 2370, as follows:

> "a A thickly-populated street or alley, esp. one marked by squalor, wretched living conditions, or the degradation of its inhabitants. * * *
> b A city district comprising such streets:—usually pl., as, to visit the *slums*."

It is a mere truism that it is not necessary that the legislature artificially define any or all words in a statute. *United States* v. *Smith*, 5 Wheat. (18 U.S.) 153. It is well established law, also, that all words in a statute must be given their general accepted connotation in the absence of any definition in the statute to the contrary. *Western Union Telegraph Co.* v. *Lenroot*, 323 U.S. 490.

Appellants complain that "Nowhere in the Act is there a standard for the factual determination of a blighted area; obsolete lay-out; technological and sociological changes; and other factors. * * * The Redevelopment Act which sets up no standards * * * gives unregulated discretion to the administrative agency and there is an unconstitutional delegation of legislative power because there is an absence of any ascertainable standards for guidance in carrying out its functions." (Appellants' Brief 13, 14). As authority they cite the *Schechter Poultry* case.[2]

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[2] 295 U.S. 495

Appellants' attack on the adequacy of the standards established by Congress in the Act is without merit. The Act contains a multitude of standards and is neither vague nor lacking in specificity. Section 2 of the Act sets forth the general purposes and Section 3 defines many of the terms used. The remaining sections are devoted to organizational, technical and procedural steps to be used in accomplishing the redevelopment. Adequate and specific standards are set out in the following language: "technological and sociological changes", "obsolete lay-out", "substandard housing and blighted areas", "use of buildings in alleys for dwellings for human habitation", "discontinuance of the use for human habitation in the District of Columbia of sub-standard dwelling and of buildings in alleys and blighted areas", "sub-standard housing conditions and the communities in the inhabitated alleys and blighted areas", "to modernize the planning and development of such portions", "sound replanning and redevelopment of an obsolescent or obsolescing portion of such District", "comprehensive planning and replanning", "lack of sanitary facilities, ventilation or light", "dilapidation, overcrowding, faulty interior arrangements" and "detrimental to the safety, health, morals, or welfare of the inhabitants". These words and phrases in the Act are "Standards".

A similar argument was made in the case of *LaForest* v. *Board of Commissioners*, 67 App. D.C. 396, 92 F. 2d 547, cert. den. 302 U.S. 760, where the United States Court of Appeals for the District of Columbia said:

> "We are, therefore, of opinion that the action of the Commissioners in suspending petitioner's permit was not based upon illegally delegated power, and there is nothing in Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604, or in Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L. Ed. 446, or Schechter Poultry Co. v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R.

947, which in our view affects the question. The Virginia case involved a statute manifestly different from that we have to deal with, but even if this were not true we should not be persuaded by anything in the opinion to change our view. The question is one as to which each state must decide for itself. The Panama and Schechter Cases involved wholly a controversy as to the distribution of power between the President and Congress or between Congress and administrative officers and commissions,—a controversy affecting the structure of the national government. Here the question is purely local. Congress as to the District of Columbia has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible. *When and how it shall delegate or distribute authority to make detailed regulations under the police power are questions which Congress may determine for itself.* Cf. Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 57 S.Ct. 549, 81 L.Ed. 835, decided by the Supreme Court March 29, 1937." (Italics supplied).

**As early as 1891, this Court rejected the argument that a Act of Congress was unconstitutional because it constituted an unlawful delegation of legislative authority. In *Field* v. *Clark*, 143 U.S. 649, this Court held that while the Legislature cannot delegate its power to make a law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.**

**See also *J. W. Hampton, Jr. and Co.* v. *United States*, 276 U.S. 394, where the Court said:**

> "* * * If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power. * * *"

More recently, this Court has had the problem of delegation of legislative power and adequate standards before it many times. In *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, this Court said:

> "* * * The standards which Congress has provided here far exceed in specificity others which have been sustained. Certainly in the hands of experts the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose of the Act. To require more would be to insist on a degree of exactitude which not only lacks legal necessity but which does not comport with the requirements of the administrative process. Delegation by Congress has long been recognized as necessary in order that the exertion of legislative power does not become a futility. *Currin* v. *Wallace*, 306 U.S. 1, 15 and cases cited. But the effectiveness of both the legislative and administrative processes would become endangered if Congress were under the constitutional compulsion of filling in the details beyond the liberal prescription here. Then the burdens of minutiae would be apt to clog the administration of the law and deprive the agency of that flexibility and dispatch which are its salient virtues. For these reasons we hold that the standards with which Congress has supplied the Commission are plainly valid. *United States* v. *Rock Royal Co-operative, supra.*"

In *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U.S. 126, this Court again had occasion to discuss this problem at length. There, the Court said:

> "* * * The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable. The essentials of the legislative function are the determination of the legislative

policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective."

Shortly thereafter, this Court had occasion to discuss this problem when it affirmed the constitutionality of the Emergency Price Control Act in the case of *Yakus* v. *United States*, 321 U.S. 414, where it was said:

"The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate. The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct—here the rule, with penal sanctions, that prices shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework. * * *"

In *American Power & Light Company* v. *Securities and Exchange Commission*, 329 U.S. 90, this Court upheld the constitutionality of an act, viz., the Public Utility Holding Company Act, against an attack that Congress in the Act delegated authority to the administrative agency in standards that were too broad. This Court took occasion to explain why, as a practical matter, such delegation is valid, saying:

> "* * * The legislative process would frequently bog down if Congress were constitutionally required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations. Such is the situation here."

See also to the same effect *Lichter* v. *United States*, 334 U.S. 742, 785.

Appellants also say that the Act, as put into effect through Project Area "B" is unconstitutional because the boundary line of said Project Area "B" is arbitrary in that it includes their property for condemnation and excludes therefrom adjacent property and property in the same block across the street (Appellants' Brief 14). This Court has recognized, as a general principle, that, of necessity, in zoning, condemnation and similar matters, a line of demarkation must be fixed, and that the fixing thereof does not, per se, render the administrative or legislative action

so arbitrary or discriminatory as to be unconstitutional. For example, in *L'Hote* v. *New Orleans*, 177 U.S. 587, 597, this Court said that:

> "* * * The power to prescribe a limitation carries with it the power to discriminate against one citizen and in favor of another. Some must suffer by the establishment of any territorial boundaries. We do not question what is so earnestly said by counsel for plaintiffs in error in respect to the disagreeable results from the neighborhood of such houses and people; but if the power to prescribe territorial limits exists, the courts cannot say that the limits shall be other than those the legislative body prescribes. If these limits hurt the present plaintiffs in error, other limits would hurt others. But clearly the inquiry as to the reasonableness or propriety of the limits is a matter for legislative consideration, and cannot become the basis of judicial action. * * *"

To the same effect, *Leventhal* v. *District of Columbia*, 69 App. D.C. 229, 230, 100 F. 2d 94; *St. Lo Construction Co.* v. *Koenigsberger*, 84 U.S. App. D.C. 319, 322, 174 F. 2d 25, cert. den. 338 U.S. 821; *American Wood Products Co.* v. *Minneapolis*, 35 F. 2d 657, 661.

## CONCLUSION

The Redevelopment Act is constitutional. In enacting it, the Congress did not delegate any legislative power to make a law or impose penalties. All that the Congress did was to leave to administrative officials power to ascertain certain facts necessary to effectuate the Act.

A Legislature is not required to define with specificity all critical words in a statute. In interpreting the statute in question, those undefined words and phrases which have

commonly accepted connotations must be given such commonly accepted meanings.

The Act, being designed to correct an evil, recognized by Congress itself, should not be limited or restricted in its application.

Respectfully submitted:

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